

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 2,)	
)	
Petitioner,)	
)	
v.)	
)	
CITY OF ST. LOUIS, BUILDING DIVISION,)	Public Case No. R 96-001
)	(Cross Reference R 95-025)
)	
and)	
)	
Respondent,)	
)	
CARPENTERS' DISTRICT COUNCIL, LOCAL 795,)	
)	
)	
Intervenor.)	

JURISDICTIONAL STATEMENT

The State Board of Mediation is authorized to hear and decide issues concerning appropriate bargaining units by virtue of Section 105.525 RSMo. 1994. This matter arises from the election petition of International Union of Operating Engineers, Local 2 (hereinafter Operating Engineers) to represent certain employees of the City of St. Louis--Building Division. Operating Engineers seek to represent a unit of all building inspectors employed by the City of St. Louis classified as Inspector I, Inspector II, and Building Inspection Supervisor I, but excluding Building Inspection Manager, Supervisor II, and all other employees. Carpenters' District Council, Local 795 (hereinafter Carpenters) was granted intervenor status in the matter after it filed a 10% showing of interest. A preliminary conference was held September 11, 1995 wherein it was determined that a question existed concerning the supervisory status of individuals employed in the classification of Building Inspection Supervisor I. A hearing on the matter was held on November 13, 1995, in St. Louis, Missouri, at which representatives

of the Operating Engineers, Carpenters, and the City were present. The case was heard by State Board of Mediation Chairman Francis Brady, employee member LeRoy Kraemer and employer member Lois Vander Waerdt. At the hearing the parties were given full opportunity to present evidence. Afterwards, the parties filed briefs. After a careful review of the evidence and arguments of the parties, the Board set forth the following Findings of Fact, Conclusions of Law and Direction of Election.

FINDINGS OF FACT

As part of its governmental functions, the City of St. Louis operates a Building Division. Among its several activities, the Division is engaged in the inspection of residential and non-residential buildings (both existing and under construction) to ensure that buildings and structures are in compliance with applicable building and zoning codes. Building inspections are conducted under various City programs including the Housing Conservation Program (an occupancy program requiring inspection before the issuance of an occupancy permit to a new resident) and Project 87 (an inspection program related to drug raids and citizens' complaints of major nuisances.)

Heading the Division is Building Commissioner Ronald Smith. He is responsible for managing the day-to-day operation of this division. With respect to the inspection function, immediately subordinate to Smith is Manager of Inspections Ray Voight. Subordinate to Voight is Neighborhood Development Supervisor Frank Oswald. Underneath Oswald in the Division's chain of command are two Building Inspection Supervisor II's. Neither of the Supervisor II positions was filled as of the date of the hearing but the City planned to fill at least one of those vacancies. Underneath the Supervisor II classification are 15 Supervisor I's. Underneath them are 83 building inspectors. The inspectors are classified as I's or II's with the I's being newer inspectors and the II's being more experienced inspectors. Most of the inspectors are Inspector II's.

The record indicates that in 1980 AFSCME, Local 410 was certified by the State Board of Mediation as the exclusive representative for a bargaining unit in the City of St. Louis--Building Division consisting of "building inspectors and trainees, but excluding supervisors and CETA employees." The record further indicates that Local 410 was decertified as bargaining representative of that unit in late 1993.

The Division's 83 building inspectors are divided into 15 crews. Nine of the crews perform inspections in specific areas of the City, five crews are involved in designated projects or programs and work throughout the City, and one handles only demolition inspections. All but one of the crews consist of three to seven inspectors. The average crew size is six inspectors. There is no fixed crew for demolition work.

Each of the 15 crews is headed by a Supervisor I. The Supervisor I's are in charge of the building inspectors on their crew and oversee them and their inspection work.

As their title implies, inspectors do building inspections. In point of fact, that is all they do on a day in and day out basis. Some inspectors do inspections over the entire city. However the vast majority of building inspectors work in a specific geographic area or territory. Thus, most inspectors are assigned to a specific area. When an inspector is assigned to a specific area they usually perform all inspections in their assigned area unless it involves a situation they are not familiar with. Consequently, if a building needs inspection in order to issue an occupancy permit, the inspection is assigned to the inspector who performs occupancy permit inspections in the part of the City where the building is located. Most inspection assignments are computer generated and result from the inflow of citizens' inspection applications. The inspectors do their own inspection scheduling about 80% of the time. The inspectors turn in daily work sheets indicating where they will be performing inspections. The inspectors prepare these work sheets themselves .

At the start of each workday the inspectors report to the office for about an hour and a half where they complete written inspection reports and forms for the building inspections they completed the previous day. After these reports and forms are completed they go out into the field to do that day's inspections. They do not wait for their Supervisor I to assign them inspections because, as previously noted, the inspectors usually make their own inspection appointments.

The Supervisor I's spend part of each workday in the office and part in the field. When they are in the office they review inspectors' written inspection reports and forms from the previous day's inspections for completeness and accuracy. They also make new inspection assignments if needed. Additionally, they sometimes meet with the inspectors on their crew to answer questions they have concerning circumstances they are not familiar with. When the Supervisor I's are in the field, they perform a variety of inspections. These inspections can either be inspections which are part of the Division's quality control program, inspections where a crew member is experiencing difficulties with a citizen or contractor, inspections for crew members who are absent or on vacation, inspections in building permit situations where it may be unclear whether a contractor is complying with the building code, or "court inspections" where because of violations observed, the individual inspector may be called to testify before the appeals board. When a Supervisor I does a quality control inspection, he/she repeats the inspection which an inspector has previously performed to ensure that the inspector complied with prescribed standards and procedures. If there are errors or deficiencies in the inspection, the Supervisor I brings those to the initial inspector's attention. The amount of time which the Supervisor I's spend doing inspections varies from individual to individual. On average, Supervisor I's spend between 5 to 20 hours per week doing inspections like those performed by the inspectors.

The Supervisor I's do not have the authority to fire, promote or transfer anyone or lay anyone off, nor have they effectively recommended any of those actions. With regard to firing, the record indicates that discharges are Smith's responsibility--not the Supervisor I's. With regard to promotions, the record does not contain any instances where a Supervisor I promoted anyone or had any input into same. The same is true of transfers. Insofar as the record shows, no Supervisor I has ever transferred an inspector to a different crew or had any input into same. Finally, with regards to layoffs, the record does not contain any instances where a Supervisor I laid off an inspector.

With regard to hiring, Supervisor I's cannot hire on their own volition. The City's hiring process works as follows. The City's Department of Personnel gives job applicants a general aptitude test. Next, an interview team interviews job applicants. Some Supervisor I's have sat on these interview panels and asked questions of the applicants. The record does not indicate the size of these interview panels or when they were convened. After the panel interviews are finished, the interview panel compiles certain unidentified information about the applicants interviewed and passes it along to the Personnel Department. The Personnel Department then creates an eligibility list. Vacancies are filled off the eligibility list. When inspector vacancies are filled, applicants on the inspector eligibility list are interviewed by Neighborhood Development Supervisor Oswald and Supervisor I Pat Young. Oswald runs the interview but Young questions the applicant also. The reason Young participates in the interview is that after an applicant is hired, they are assigned to her crew which is composed exclusively of newly-hired inspectors. Young trains the new hires how to do inspections. After they are trained they move to another crew.

With regard to discipline, it has previously been noted that Supervisor I's are not empowered to discharge employees. They are not empowered to suspend them either and have not done so. This responsibility rests with those further up the Department's

chain of command. The Supervisor I's are empowered to issue verbal and written warnings though and have done so. The verbal warnings usually consist of pointing out mistakes and admonishing employees to improve their work performance. The Supervisor I's do not have to check with anyone before giving a verbal warning. The record indicates that Supervisor I's issue written warnings infrequently since just six written warnings have been issued in the past seven years in the Department with the most recent occurring in mid-1993. When Supervisor I Turner issued a written warning in 1992, he did so only after two of his (i.e. Turner's) superiors had discussed the matter with the employee in question. Oswald indicated that before issuing a written warning, a Supervisor I would "certainly discuss" the matter with him or a Supervisor II .

With regard to evaluations, the Supervisor I's are "first raters" on the annual "Employee Service Rating" (i.e. a performance appraisal) for their crew members. The Department's evaluation process works as follows. Two individuals complete and sign a pre-printed evaluation form which they receive from the Personnel Department. The two individuals who complete this form are known as the first rater and the second rater. In the Building Department, the Supervisor I's are first raters for the inspectors and the Supervisor II's or Oswald are the second raters for the inspectors. The evaluation form currently utilized lists the following categories: work quality, work quantity, relationships affecting work, work habits and overall rating. Each of these categories has a scale of the following ratings: Outstanding, Proficient, Meets Standards or Must Improve. The first rater checks the ratings they think are appropriate. If the first rater gives an overall rating of "Outstanding", they explain why the inspector's work is considered "Outstanding". Conversely, if the first rater gives an overall rating of "Must Improve", the first rater has to explain in narrative form what the employee's performance problems are and what the employee needs to improve. This narrative is called a Mandatory Improvement Program. In preparing a Mandatory Improvement Program the first rater

uses a pre-established written guideline. This narrative is attached to the completed evaluation. The first rater then submits the completed evaluation and narrative (if any) to the second rater who reviews it in its entirety and offers “input” concerning same. If the second rater disagrees with the first rater on either a rating or the narrative, they resolve their disagreement and “finalize” the evaluation. The second rater then checks the ratings on the evaluation they think are appropriate. All the evaluations contained in the record contain ratings from the first and second rater that are identical. Thus the record does not contain any instances where a Supervisor I rated an inspector differently than the second rater did. The Supervisor I then meets with the inspector and goes over the completed evaluation with them. The second rater usually does not participate in these meetings.

Employees who receive ratings of “Must Improve” or “Meets Standards” are ineligible for a pay raise. Employees who receive ratings of “Proficient” or “Outstanding” are eligible for a pay raise.

The record disclosed that individuals in the classifications relevant to this proceeding are paid within a pay range. An Inspector I is at Grade 13G where the range is from \$854 to \$1151 biweekly. An Inspector II is at Grade 15G where the range is from \$937 to \$1261 biweekly. A Supervisor I is at Grade 17G where the range is from \$1028 to \$1383 biweekly. A Supervisor II is at Grade 19M where the range is from \$1130 to \$1679 biweekly. The Supervisor II’s pay is prescribed by the City’s “management” schedule, while pay in the other classifications is prescribed in the “general” schedule.

CONCLUSIONS OF LAW

Both Operating Engineers and Carpenters petitioned to be certified as the exclusive bargaining representative for a unit of inspectors and Supervisor I's in the City of St. Louis--Building Division.

An appropriate bargaining unit is defined by Section 105.500 (1) RSMo. 1994 as:
A unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned.

In this case there is no dispute per se concerning the appropriateness of a unit of inspectors. The only question raised by the City with the composition of the proposed bargaining unit concerns the inclusion of the Supervisor I's within that unit. As a practical matter then, the City's question concerning the appropriateness of including the Supervisor I's in the bargaining unit is subsumed into the question of their possible supervisory status. That being so, our determination herein concerning whether the Supervisor I's are supervisors will be dispositive of whether they are included in the bargaining unit. With this caveat, we hold that in the context of this case, a unit of inspectors in the St. Louis--Building Division is an appropriate bargaining unit within the meaning of the Missouri Public Sector Labor Law.

As just noted, at issue here is whether the 15 Supervisor I's should be included in that unit. The City contends they should be excluded from same on the grounds they are supervisors. Both Unions dispute that assertion.

Although supervisors are not specifically excluded from the coverage of the Missouri Public Sector Labor Law, case law from this Board and the courts have carved out such an exclusion. See Golden Valley Memorial Hospital v. Missouri State Board of Mediation, 559 S.W.2d (Mo.App. 1977) and St. Louis Fire Fighters Association, Local 73 v. City of St. Louis, Missouri, Case No. 76-013 (SBM 1976). This exclusion means that supervisors cannot be included in the same bargaining unit as the employees they

supervise. Since a dispute exists here as to whether the Supervisor I's "supervise" the inspectors, it is necessary for us to determine if such is, in fact, the case.

This Board has traditionally used the following indicia to determine supervisory status:

- (1) The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees;
- (2) The authority to direct and assign the work force, including a consideration of the amount of independent judgment and discretion exercised in such matters;
- (3) The number of employees supervised and the number of other persons exercising greater, similar and lesser authority over the same employees;
- (4) The level of pay, including an evaluation of whether the person is paid for his or her skills or for his or her supervision of employees;
- (5) Whether the person is primarily supervising an activity or primarily supervising employees; and
- (6) Whether the person is a working supervisor or whether he or she spends a substantial majority of his or her time supervising employees.¹

We will apply those factors here as well. Not all of the above factors need to be present for a position to be found supervisory. In each case the inquiry is whether these factors are present in sufficient combination and degree to warrant the conclusion that the position is supervisory.²

Applying these criteria to the 15 Supervisor I's at issue here, we conclude they do not meet this supervisory test. Our analysis follows.

FACTOR 1:

¹ See, for example, City of Sikeston, Case No. R 87-012 (SBM 1987).

² See, for example, Monroe County Nursing Home District, d/b/a Monroe Manor, Case No. R 91-016 (SBM 1991).

It is undisputed that the Supervisor I's cannot fire, promote or transfer anyone or lay anyone off. All those tasks are handled by Smith, Voight, Oswald or the Supervisor II's; not the Supervisor I's.

Having said that, the Supervisor I's exercise some responsibilities in three of the areas listed or inferred in factor (1), namely hiring, disciplining, and evaluating employees. An analysis of their role in those areas follows.

- a. The Supervisor I's do not hire on their own volition. That said, some Supervisor I's have sat on interview panels which interviewed job applicants. These interview panels did not decide who to hire however. Instead, these interview panels simply gathered information about the applicants and passed it along to the Personnel Department, which then creates an eligibility list. When there are inspector vacancies in the Department, the applicants on this eligibility list are then interviewed by Oswald and Supervisor I Young. Oswald runs the interview. It appears from the record that the reason Young participates in the interview is because after an applicant is hired, they are assigned to her crew until they are trained. While the foregoing evidence establishes that some Supervisor I's have served on interview committees, not all Supervisor I's have done so. That being the case, we find that the Supervisor I's, as a class, do not all serve on interview committees or effectively recommend hiring decisions.
- b. Supervisor I's cannot discharge or suspend employees. They can issue verbal and written warnings though. The Supervisor I's issue verbal warnings without clearing it in advance with anyone up the chain of command. When they issue written warnings though they consult with those above them. This convinces us that when a decision of any consequence is made concerning discipline, the Supervisor I's consult with those above them before taking any action.
- c. The Supervisor I's are the first raters for the inspectors on their crew. This process involves their completing a pre-printed evaluation form by rating the employee's performance in a variety of areas using a scale which ranges from "Outstanding" to "Must Improve". If they rate the inspector as "Outstanding", they indicate why they are doing so. Conversely, if they rate the inspector as "Must Improve", they write up a narrative called a Mandatory Improvement Program which needs to be corrected. After the Supervisor I rates the inspector, the evaluation then goes to the second rater who reviews it and gives "input" to the Supervisor I concerning same. Since the second rater

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gives “input” to the Supervisor I about the evaluation’s content, it is apparent that the Supervisor I’s do not complete the evaluations independently. These evaluations are used by the City to justify awarding, or withholding, pay increases. Those employees who receive an overall rating of “Must Improve” or “Meets Standards” from both the first and second rater are ineligible for a pay raise while those who receive an overall rating in the other two categories (i.e. “Outstanding” or “Proficient”) from both raters are eligible for a pay raise. Since these evaluations affect the employee’s ultimate paycheck, they are obviously important. However, the Supervisor I’s do not determine what the pay increase will be for inspectors nor do they award them any money; that decision is made by others further up the chain of command.

FACTOR 2:

There is no question that the Supervisor I’s are in charge of the inspectors on their crew and oversee them on a daily basis. In doing so, the Supervisor I’s monitor and review the paperwork which the inspectors complete to ensure it is done properly and accurately. The Supervisor I’s also assign work to the inspectors on a daily basis. This work, of course, is building inspections. The Supervisor I’s do not determine what work is performed however. Work assignments are dependent on what comes through the Division’s doors each day. If an inspection needs to be performed, the Supervisor I is the “conduit” (in the words of one Supervisor I) who passes it on to the inspector who handles that territory. Consequently, inspectors do not wait for their Supervisor I to assign them inspections, meet with them or make decisions about what inspections to do. This persuades us that while the Supervisor I’s certainly make decisions concerning work assignments, these decisions involved limited independent judgment and discretion.

FACTOR 3:

The record establishes that with the exception of the demolition work for which there is no fixed crew, there are about six inspectors on each crew. Thus, each Supervisor I is responsible for a crew of six inspectors. In our view, there is nothing about the size of these crews that raise any “red flags” concerning the number of employees overseen.

The evidence on the second part of the third factor (i.e. the number of other persons exercising greater, similar or lesser authority with respect to the same employees) demonstrated that there are a number of layers of authority in the Building Department that exercise greater authority over the inspectors than the Supervisor I’s do, namely Building Commissioner Smith, Manager of Inspections Voight, Neighborhood Development Supervisor Oswald, and the Supervisor II’s. As a practical matter, the Supervisor I’s are at the bottom of the Building Department’s managerial hierarchy in terms of exercising control over the inspectors.

FACTOR 4:

We believe it is noteworthy that the Supervisor I’s are classified by the City in the same wage category as the inspectors are, namely the “G” (i.e. general) category. It is not until the Supervisor II classification that the pay category changes to the “M” (i.e. management) category. That said, Supervisors I certainly have the potential to be paid more than the inspectors on their crews because they are at a higher pay grade. However, that is not automatically the case because the City’s pay structure incorporates a pay range. Under the existing pay range, both Inspector I’s and II’s can be paid more than Supervisor I’s.

FACTOR 5:

The record establishes that for part of each work day, the Supervisor I's work at the office while the inspectors are doing inspections in the field. A natural consequence of this arrangement is that the Supervisor I's do not monitor the inspectors in person as they do their inspections. Instead, they invariably review and observe the work of the inspectors after it has been performed. It appears from the record that the building inspectors perform their assigned duties (i.e. their inspections) with little active guidance from the Supervisor I's. This leads us to conclude that the Supervisor I's primarily supervise the work performed by the inspectors (i.e. their work activities) as opposed to directly supervising the inspectors themselves.

FACTOR 6:

The record indicates that some of the Supervisor I's spend as much as half of their work time performing inspections. Thus, as much as half their work hours are spent performing duties that are similar to those performed by the inspectors on their crew.

Given the foregoing, we hold that while the Supervisor I's oversee the inspectors and their work on a day-to-day basis, they do not exercise sufficient supervisory authority in such a combination and degree to make them supervisors.

DECISION

It is the decision of the State Board of Mediation that the Supervisor I's at issue here are not supervisory employees. They are therefore included in the bargaining unit found appropriate. The description of the bargaining unit found appropriate is as follows:

All building inspection employees of the City of St. Louis, Missouri--Building Division including Building Inspector I, Building Inspector II, and Building Inspection Supervisor I, but excluding Building Inspection Supervisor II,

Neighborhood Development Supervisor, Manager of Inspections, office clerical and professional employees, and all other employees.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation, or its designated representative, among the employees in the aforementioned bargaining unit, as early as possible, but not later than 45 days from the date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. Those eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during the period because of vacation or illness. Those ineligible to vote are those employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election. Those eligible to vote shall vote whether or not they desire to have International Union of Operating Engineers, Local 2, Carpenters' District Council, Local 795, or neither as their exclusive bargaining representative.

The City shall submit to the Chairman of the State Board of Mediation, as well as to both Unions, within fourteen (14) calendar days from the date of this decision, an alphabetical list of names and addresses of employees in the aforementioned bargaining unit who were employed during the payroll period immediately preceding the date of this decision.

Signed this 1st day of March, 1996.

STATE BOARD OF MEDIATION

SEAL

/s/ Francis R. Brady
Francis R. Brady, Chairman

/s/ Lois Vander Waerd
Lois Vander Waerd, Employer Member

/s/ LeRoy Kraemer
LeRoy Kraemer, Employee Member